IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.477 OF 2005
IN
NOTICE OF MOTION NO.2196 OF 2004
IN
SUIT NO.2152 OF 2004

M/s.Ultra Distributors Pvt.Ltd.
a Company incorporated under the
provisions of Companies Act,
having their office at 2-C
Thakkar Industrial Estate, N.M.
Joshi Marg, Mumbai 400 01. .. Appellant
(Orig.Plaintiff)

v/s.

1. M/s.Laser Video, a firm having
its office at Kokil Kunj,
Karamsad Road, Near Neelkamal
Society, Vallabh Vidyanagar 388 120,
Gujarat.

2. M/s.Navrang Electronics
a firm having its office at
Usha Kiran, 2nd Floor, Above
Eagle Travels, Near Moti Tanki,
Rajkot 360 001.

3. M/s.R.B. Films Combine
a firm having its office at
7-B Mangal Park, Nirmala Convent
Main Road, Rajkot. .. Respondents
(Orig.Defendants)

Mr.A.M.Saraogi with Mr.Nivas Kamble for the appellant.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 22nd June, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard Mr.A.M.Saraogi, the learned counsel for the appellant.

2. Upon perusal of the agreement dated September 5, 2000, we find that the Video Copyright in favour of the present appellant by the respondents relating to cinematograph films and programmes titled as per schedule 'A' in Gujarati was given for consideration of Rs.13,51,000/-. Rs.3,00,000/- were to be paid by the appellant on signing of the agreement. Rs.5,00,000/- on delivery of entire material as per clause 9 of the agreement. A further amount of Rs.3,00,000/- was to be made 21 days after issuing public notice subject to no claim for any film or programme to any third party and the last payment of Rs.2,51,000/- was to be made against delivery of the balance U-Matic masters. It does not seem to be in dispute that Rs.3,00,000/- were paid by the appellant to the respondents on signing the agreement. Later on the agreement came to be terminated by the respondent on 10th April, 2004 for want of payment of the consideration inspite of the delivery of the material having been taken by the appellant as per the schedule of agreement dated 5.9.2000.

3. The learned counsel for the appellant sought to contend that payment of Rs.5,00,000/- was payable to the respondent on delivery of the material as per

the schedule of the agreement and since the material was not delivered, the remaining consideration was not paid. We are afraid, the contention of the learned counsel for the appellant cannot be accepted. At no point of time from 5.9.2000 until 10.4.2004 when the agreement dated 5.9.2000 was terminated by the respondents, the present appellant raised any grievance about the non-delivery of the material mentioned in the schedule. In the notice of termination of the agreement dated 10.4.2004, the respondents have clearly stated that inspite of the delivery having been taken of all the material as per the schedule of the agreement dated 5.9.2000, full consideration has not been made to the respondents and therefore, the agreement dated 5.9.2000 is terminated. Though the appellant has raised the dispute about the correctness of the statement made in the notice dated 10.4.2004, at this stage, prima facie, in the light of the facts obtaining in the case, it cannot be accepted that the delivery of the material as per the schedule of the agreement dated 5.9.2000 was not made by the respondents. If that were so, the appellant would have taken up the matter with the respondents at least once or twice in four years.

4. We, therefore, find no justifiable ground to

interfere with the impugned order. Appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)